

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

CHERLY ARLOTT, et al.

PLAINTIFFS

VS.

CIVIL ACTION NO. 3:06cv303-WHB-LRA

ROBERT C. ARLEDGE, et al.

DEFENDANTS

ORDER

This cause is before the Court on the Motions of Defendants Robert C. Arledge and Richard Schwartz to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. When considering a Rule 12(b)(6) motion to dismiss, the court must liberally construe the allegations in the complaint in favor of the plaintiff and accept all pleaded facts as true. Lowrey v. Texas A & M Univ. Sys., 117 F.3d 242, 247 (5th Cir. 1997) (quoting Campbell v. Wells Fargo Bank, 781 F.2d 440, 442 (5th Cir. 1986)). A complaint cannot be dismissed under this rule "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Blackburn v. Marshall, 42 F.3d 925, 931 (5th Cir. 1995).

The Docket shows that after the subject Motions were filed, Plaintiffs were granted leave to amend, and filed an Amended Complaint on November 29, 2006. The Court finds that as an Amended Complaint has been filed, which names additional plaintiffs and

defendants and alters the allegations underlying this litigation, the subject Motions to Dismiss should be denied, without prejudice, at this time.¹

For the foregoing reasons:

IT IS THEREFORE ORDERED that the Motion to Dismiss filed by Defendant Richard Schwartz [Docket No. 14] is hereby denied without prejudice.

IT IS FURTHER ORDERED that the Motion to Dismiss filed by Defendant Robert C. Arledge [Docket No. 16] is hereby denied without prejudice.

SO ORDERED this the 5th day of January, 2007.

s/ William H. Barbour, Jr.
UNITED STATES DISTRICT JUDGE

¹ For example, both Arledge and Schwartz argue that they should be dismissed from the lawsuit because neither of these attorneys represented any of the plaintiffs named in the original complaint. The Amended Complaint names an additional three plaintiffs, Gloria Middleton, Beverly K. Rushing, and Retha Sneed. The Amended Complaint, however, does not indicate whether any of these plaintiffs were represented by either Arledge or Schwartz. As the Court cannot presently determine whether any of the newly added plaintiffs were represented by either Arledge or Schwartz, the Court cannot properly assess the merits of the subject Motions to Dismiss at this time.